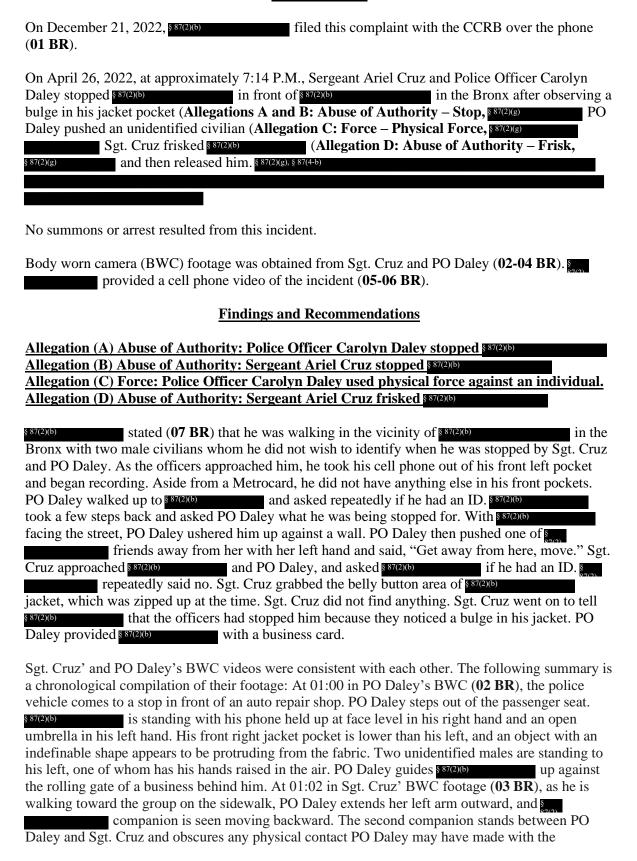
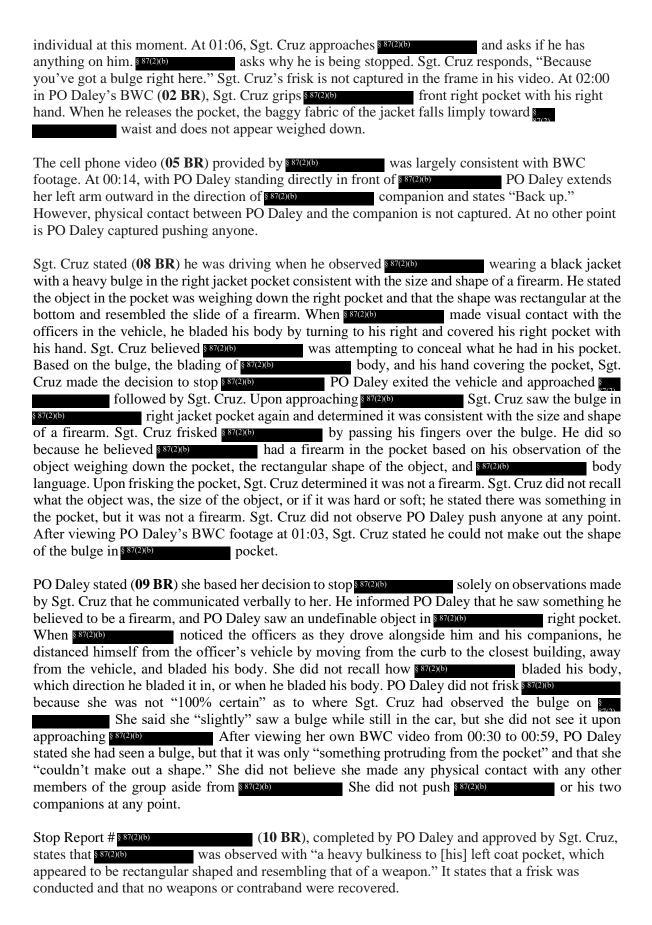
## CCRB INVESTIGATIVE RECOMMENDATION

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## **Case Summary**



CCRB Case # 202208690



Per <u>People v. De Bour</u>, 40 N.Y.2d 210 (1976) (**12 BR**), officers may forcibly stop and detain a person when they have a reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. Officers may frisk an individual if they reasonably suspect that they are in danger of physical injury by virtue of the individual being armed. DeBour notes that a "pocket bulge" can be caused by "any number of innocuous objects," while a waistband bulge is "telltale of a weapon."

Per <u>People v. Gerard</u>, 942 N.Y.S.2d 112 (13 BR), an individual in a high-crime area early in the morning who has a weighted-down bulge in his pocket, changes course after noticing officers, and blades his body as an officer approaches him, only provides the officers with founded suspicion and, in totality, does not create the reasonable suspicion necessary to stop and frisk the individual.

Per <u>People v. Stevenson</u>, 7 A.D.3d 820 (**14 BR**) an officer's observation of a bulge on an individual's person that is "readily susceptible of an innocent as well as a guilty explanation" permits the officer to ask the individual if he has a weapon, but such an observation is insufficient to permit the officer to stop the individual.

Per <u>People v. Allen</u>, 1985 N.Y. App. Div. LEXIS 44506, \*1 (**15 BR**), "Reaching toward one's pocket, even where there is a heavy but undefined bulge, does not create a reasonable suspicion that the individual is armed... [W]here there is no objectively suspicious activity, there is no justification for seizure or a pat down."

Per <u>People v. Cornelius</u>, 113 A.D.2d 666 (**16 BR**), "The police simply do not have *carte blanche* to search or 'touch the pocket' of every individual on the street who walks in a 'little out of the ordinary' manner, looks over his shoulder, wears a 'wrinkled up and dirty' 'ragged and old' coat, or appears to have a bulky object in his pocket... There must be describable conduct or proof of a describable object before police can probe for a concealed weapon."

firearm, BWC footage and PO Daley's testimony contradict this. PO Daley's footage only shows	an
undefined bulge in the pocket just prior to the stop, and at the end of the stop appears to show a	
pocket that is not weighed down by anything. Contrary to Sgt. Cruz' testimony, PO Daley's	
statement is consistent with her BWC footage insofar as she stated she only ever saw something	
with an undefined shape protruding from the pocket. Sgt. Cruz's observation that the object in the	
pocket produced heavy and rectangular bulge is susceptible to both guilty and innocent	
explanations, as a number of innocuous objects, such as a cell phone or wallet, could create such a	L
bulge. Sgt. Cruz' other reasons for conducting the stop, namely \$87(2)(0) blading of his	
body and covering of his pocket with his hand, \$87(2)@	

Per Patrol Guide Procedures 221-01 (11 BR), "Force may be used when it is reasonable to ensure the safety of a member of the service [...] or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances."

BWC footage shows that PO Daley extended her left arm outward toward save companion and asked him to back up. At the time, the companion was standing in close proximity

	Daley as she and Sgt. Cruz were stopping 887(2)(6) on the suspicion that he was ng a firearm. 887(2)(6)
§ 87(2)(g),	§ 87(4-b)
	-
	Civilian and Officer CCRB Histories
	Civilian and Officer CCRD Histories
• § 8	7(2)(6)
• P	202208638 is still open to date and involves allegations of a stop, a frisk, and a failure to provide an RTKA card.
0	RTKA card.
0	202205254 is still open to date and involves allegations of a stop, a frisk, and a search of a
0	person. § 87(2)@
J	
0	§ 87(2)(g)
0	§ 87(2)(g)

Mediation, Civil, and Criminal Histories

declined to mediate this complaint.

Signature

- As of May 17, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (19 BR).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

• This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.						
Squad:13						
Investigator:	Coleson Smith Signature	Inv. Coleson Smith Print Title & Name	5/26/2023 Date			
Squad Leader:	JP Lozada Signature	IM Jean-Paul Lozada Print Title & Name	05/26/2023 Date			
Reviewer:						

Print Title & Name

Date